

REMARKS

Claims 1 – 24 are pending in the application. In the Outstanding Office Action, the Examiner: rejected claims 1 – 7 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,788,508 to Lee et al. (hereinafter, “Lee”); rejected claim 8 under 35 U.S.C. 103(a) as being unpatentable over Lee and further in view of U.S. Patent No. 5,944,530 to Ho et al. (hereinafter, “Ho”), rejected claims 9 – 24 under 35 U.S.C. 103(a) as being unpatentable over Lee and further in view of U.S. Patent No. 5,195,053 to Samph et al. (hereinafter, “Samph”); and further rejected claim 21 under 35 U.S.C. 103(a) as being unpatentable over Lee in view of Samph and further in view of Ho.

In a Response filed on June 6, 2007, Applicant presented various arguments to the Examiner distinguishing the present disclosed subject matter from the cited art. In response, the Examiner indicated that the features upon which those arguments relied were not recited in the rejected claims. (See the Office Action of August 17, pages 6 and 7, “Response to Arguments”). Accordingly, by this Response and Amendment, claims 1, 11, 16, 19, and 22 have been amended to recite the features over which arguments were made in the previous response, and claims 9, 10, 17, and 20 have been amended to recite proper antecedent basis.

Support for the amendments to claims 1, 11, and 22 may be found in the specification as originally filed, including *inter alia* on page 15, lines 19 – 25, and on page 19, lines 24 – 26. Support for the amendments to claims 16 and 19 may be found in the specification as originally filed, including *inter alia* from page 16, line 17 to page 17 line 6.

As amended, the Examiner’s rejections of claims 1, 11, 22, and all claims dependent therefrom, are traversed.

Rejections Under 35 U.S.C. §102

The Examiner rejected claims 1 – 7 under 35 U.S.C. 102(b) as being anticipated by Lee.

Response

For a reference to anticipate an invention, all of the elements of that invention must be present in the reference. The test for anticipation under section 102 is whether each and every element as set forth in the claim is found, either expressly or inherently, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); MPEP §2131. The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); MPEP §2131.

By this Response and Amendment, Applicant respectfully traverses the Examiner's rejection since the cited art does not disclose, teach or suggest all of the features of independent claim 1. Independent claim 1 has been amended, and now recites *inter alia* a database storing a "plurality of evaluation questions and a plurality of assessment questions...*wherein answers to said evaluation questions are used in said at least one assessment course to determine which of said assessment questions are shown to said assessed user.*" (Emphasis added)

As claimed, the evaluation questions and the assessment questions serve different purposes. Evaluation questions are presented to a surveyor in order to construct a "profile" of a laboratory (or other surveyed facility). While the answers to the assessment questions form the basis of the assessment (Present Application, page 15, lines 23 – 25), answers to the evaluation questions are "used in the self-assessment course to determine *which* [assessment] questions would be shown to

the Surveyor. For example, if the specialty of microbiology is not conducted in the laboratory, the Surveyor would not be presented (*i.e.* would not have to answer) any microbiology-related self-assessment questions.” (Present Application, page 15, lines 19 – 22, emphasis added) “*An answer to an evaluation question will control the display of the following assessment questions and other question groups contained within the group that it controls.*” (Present Application, page 19, lines 24 – 26, emphasis added)

Lee is directed to an interactive computer-aided natural learning method and apparatus. In Lee, a teacher assigns lesson segments to students based on their homework scores or other educational progress. The student then runs a control program corresponding to the assigned lesson segment, and answers related questions. The control program is downloaded from the teacher’s computer, or may be stored on the student’s workstation. (Lee et al., col. 5, lines 16 – 30). Significantly, it is the teacher who selects the questions to be answered. (*id.*; see also Fig. 2 step 130)

Lee fails to anticipate the present subject matter, as it does not disclose, teach, or suggest a “plurality of evaluation questions and a plurality of assessment questions...wherein answers to said evaluation questions are used in said at least one assessment course to determine which of said assessment questions are shown to said user,” as recited in independent claim 1. Even if *arguendo* Lee’s control programs correspond to the presently claimed “assessment courses,” Lee’s control programs are formed of one complete set of questions preselected by the teacher. Lee gives no indication that any answers provided by the student to some of the questions (the presently claimed “evaluation questions”) would be “used...to determine which ... questions are shown” to that student. If *arguendo* Lee’s questions are “assessment questions,” there are no corresponding “evaluation

questions.” Further, as specifically recited, it is the “assessed” user who selects the evaluation questions, which in turn determine which questions are shown to the same assessed user.

Accordingly, as Lee fails to disclose, teach, or suggest all of the features of independent claim 1, the anticipation rejections to claim 1, and to claims 2 – 7 dependent therefrom, are respectfully traversed. Reconsideration and withdrawal of these rejections are requested.

Rejections Under 35 U.S.C. §103

The Examiner rejected claim 8 under 35 U.S.C. 103(a) as being unpatentable over Lee and further in view of Ho, rejected claims 9 – 24 under 35 U.S.C. 103(a) as being unpatentable over Lee and further in view of Samph, and further rejected claim 21 under 35 U.S.C. 103(a) as being unpatentable over Lee in view of Samph and further in view of Ho.

Response

To establish a *prima facie* case of obviousness, the Examiner must establish: (1) that some suggestion or motivation to modify the references exists; (2) a reasonable expectation of success; and (3) that the prior art references teach or suggest all of the claim limitations. *Amgen, Inc. v. Chugai Pharm. Co.*, 18 USPQ2d 1016, 1023 (Fed. Cir. 1991); *In re Fine*, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988); *In re Wilson*, 165 USPQ 494, 496 (CCPA 1970).

By this Response and Amendment, Applicant respectfully traverses the Examiner’s rejection since the cited art does not disclose, teach or suggest all of the features of independent claims 1, 11, or 22. The arguments above with respect to Lee are incorporated in this section by reference.

As noted above, Lee fails to anticipate the present claims, as Lee does not disclose, teach, or

suggest a “plurality of evaluation questions and a plurality of assessment questions...wherein answers to said evaluation questions are used in said at least one assessment course to determine which of said assessment questions are shown to said assessed user,” as recited in independent claim 1, from which claims 8 – 10 depend.

Claims 11 and 22 have also been amended, and now also recite *inter alia* a “plurality of evaluation questions and a plurality of assessment questions...wherein answers to said evaluation questions are used in said at least one assessment course to determine which of said assessment questions are shown to said assessed user.” Claims 12 – 21, 23, and 24 all depend from claims 11 and 22.

As argued above, Lee also fails to anticipate these claims, as Lee does not disclose, teach, or suggest a “plurality of evaluation questions and a plurality of assessment questions...wherein answers to said evaluation questions are used in said at least one assessment course to determine which of said assessment questions are shown to said assessed user,” as now recited in independent claims 11 and 22.

The Examiner cites Ho and Samph to cure deficiencies of Lee. Ho is drawn to a learning method and system which adjust to a user’s concentration level based on “monitoring the student’s volitional or involuntary behavior.” (Ho, abstract) Samph is drawn to a testing system including “means for issuing a certification upon successful completion of the test.” (Samph, title)

Both Ho and Samph fail to cure the above deficiencies of Lee, as these references too fail to disclose, teach, or suggest a “plurality of evaluation questions and a plurality of assessment questions...wherein answers to said evaluation questions are used in said at least one assessment course to determine which of said assessment questions are shown to said assessed user.” In neither

Ho nor Samph are answers to one type of questions used to determine which of a second type of question will be shown to an assessed user.

Accordingly, as the combination of Lee, Ho, and Samph fails to disclose, teach, or suggest all of the features of independent claims 1, 11, and 22, the Examiner has failed to make a *prima facie* case of obviousness with respect to these claims and those claims dependent therefrom. The obviousness rejections to claims 8 – 10 and 12 – 24 dependent therefrom are respectfully traversed. Reconsideration and withdrawal of these rejections are requested.

Independently Patentable Features

The combination of Lee, Ho, and Samph also fail to disclose, teach, or suggest additional independently patentable features as set forth in the present amended claims.

Lee, Ho, and Samph, taken alone or in combination, also fail to disclose, teach, or suggest that “a weight is assigned to each of [the] plurality of responses” to the evaluation questions (claim 16) or assessment questions (claim 19), and that each weight is “relative to others of said plurality of responses, based on compliance with at least one goal of said certification.” as presently claimed. Applicant traverses the Examiner’s statement, taken on Page 6 of the Office Action, that Lee anticipates these claims because “each response is given an equal weight during the conversion to the grade.” As set forth in the present application specification (page 16 line 17 to page 17 line 6) and claims “weights...are assigned to each question based on a certain degree of compliance (e.g., four points for full compliance, three points for substantial compliance; and one point for non-compliance).” Such claimed “weights” are not present in Lee, Ho, or Samph.

For these additional reasons, Applicant submits that these claims are independently

patentable over the cited art of record.

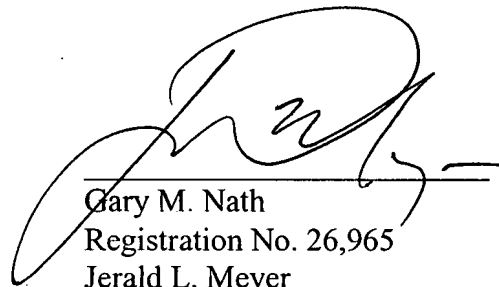
Conclusion

In light of the foregoing, Applicant submits that the application is in condition for allowance. If the Examiner believes the application is not in condition for allowance, Applicant respectfully requests that the Examiner call the undersigned.

Respectfully submitted,
THE NATH LAW GROUP

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THE NATH LAW GROUP
112 South West Street
Alexandria, VA 22314-2891
Tel: 703-548-6284
Fax: 703-683-8396



Gary M. Nath
Registration No. 26,965
Jerald L. Meyer
Registration No. 41,194
Matthew J. Moffa
Registration No. 58,860
Customer No. 20529